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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

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9 DEUTSCHE BANK NATIONAL TRUST)
10 COMPANY,)
11 Plaintiff,)
12 vs.)
13 CHICAGO TITLE INSURANCE)
14 COMPANY, *et al.*,)
Defendants.)

3:19-CV-00649-RCJ-CLB

ORDER

15 There are currently close to two-hundred cases making their way through Nevada's state
16 courts and this District in which a national lender has sued a title insurer for breach of an American
17 Land Title Association ("ALTA") 1992 Form 1 lender's policy of title insurance, with either the
18 ALTA 4/5 and 9 endorsements. In each of these cases, the lender contends (and the insurer
19 disputes) that the title policy covers the lender for claimed losses stemming from HOA assessment
20 lien foreclosures in violation of Nevada contract law. The instant action is one of these cases.

21 In *Wells Fargo Bank, N.A. v. Fidelity National Title Ins. Co.*, Ninth Cir. Case No. 19-17332
22 ("Wells Fargo II"), the Ninth Circuit was considering one of these ALTA cases. On December 11,
23 2019, the parties stipulated to stay this case for all purposes pending the Ninth Circuit's disposition
24 of *Wells Fargo II* before discovery had started. (ECF No. 9.) On December 23, 2019, this Court

1 entered that stipulation. (ECF No. 13.) On November 29, 2021, the Ninth Circuit issued its
2 mandate in *Wells Fargo II*, and Plaintiff now moves to lift the stay in this case. (ECF No. 16.)
3 Defendants oppose this motion through response and countermotion requesting this Court extend
4 the stay until another one of these numerous cases is ruled upon by the Nevada Supreme Court,
5 *PennyMac Corporation v. Westcor Land Title Insurance Company*, Nev. Sup. Ct. Case No. 83737
6 (Eighth Judicial Dist. Ct. Case No. A-18- 781257-C) (“*PennyMac*”). (ECF Nos. 17, 18.) These
7 motions are fully briefed and ripe for this Court’s review. (ECF Nos. 19, 20, 21.) For the reasons
8 stated herein, the Court lifts the stay.

9 **LEGAL STANDARD**

10 “A district court has inherent power to control the disposition of the causes on its docket
11 in a manner which will promote economy of time and effort for itself, for counsel, and for
12 litigants.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). When considering entering such
13 a stay, a court should consider three factors: “the possible damage which may result from the
14 granting of a stay, the hardship or inequity which a party may suffer in being required to go
15 forward, and the orderly course of justice measured in terms of the simplifying or complicating of
16 issues, proof, and questions of law which could be expected to result from a stay.” *Lockyer v.*
17 *Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX*, 300 F.2d at 268).

18 **ANALYSIS**

19 Applying the three factors identified by the Ninth Circuit in *Lockyer*, the Court exercises
20 its discretion and lifts the stay:

21 ***A. The possible damage which may result from the granting of a stay***

22 Plaintiff would be prejudiced in the form of a delay in potential recovery. Courts recognize
23 this form of prejudice to weigh against stays where, as here, there is not an “express finding[] that
24 the respective stay[] would be of limited duration.” *Singer v. Las Vegas Athletic Clubs*, 376 F.

1 Supp. 3d 1062, 1071 (D. Nev. 2019). This case has already been stayed for over two years waiting
 2 for the resolution of *Well Fargo II*, staying this case for another year or more while the Nevada
 3 Supreme Court considers similar issues in *PennyMac* is such a duration that prejudices Plaintiff.
 4 This factor therefore weighs in favor of lifting the stay now.

5 ***B. The hardship or inequity which a party may suffer in being required to go forward***

6 Defendants' only argument of hardship in lifting the stay is that the parties will incur fees
 7 and costs from litigating this case. This is insufficient for this factor to weigh in favor of a stay. A
 8 party "being required to defend a suit, without more, does not constitute a 'clear case of hardship
 9 or inequity.'" *Lockyer*, 398 F.3d at 1112. This factor therefore neither weighs in favor or against
 10 extending the stay.

11 ***C. The orderly course of justice measured in terms of the simplifying or complicating
 12 of issues, proof, and questions of law which could be expected to result from a stay***

13 The Court concludes that a further stay would not serve the orderly course of justice. The
 14 Ninth Circuit has already ruled upon these issues and the Court is not convinced that an order in
 15 *PennyMac* is imminent or that such an order will necessarily settle this matter.¹ The Court therefore
 16 finds that this factor favors lifting the stay.

17 ***D. Totality of the factors***

18 Factors A and C weigh in favor of proceeding with this case, and Factor B does not weigh
 19 in either way. Overall, the factors thus favor lifting the stay and proceeding with this case.²

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 22 ¹ *PennyMac* is an appeal from an order granting summary judgment involving different parties,
 23 represented by different counsel, and is based on different (but similar) facts. While the case may
 clarify the issues, it is unlikely to completely resolve this case.

24 ² Confirming this conclusion, all of the other judges in this District to consider this issue have
 declined to stay these ALTA cases because of the *PennyMac* appeal. (See ECF No. 20 at 2 n.1
 (collecting cases).)

CONCLUSION

IT IS HEREBY ORDERED that Motion to Lift Stay (ECF No. 16) is GRANTED.

IT IS FURTHER ORDERED that Motion to Extend Stay (ECF No. 18) is DENIED.

IT IS FURTHER ORDERED that this case is no longer stayed.

IT IS SO ORDERED.

Dated August 24, 2022.

ROBERT C. JONES
United States District Judge